

LABOUR DEPARTMENT

The 9th September, 1994

No. 14/13/87-6Lab./35.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workmen and the management of Transport Commissioner, Haryana, Chandigarh and etc. *versus* Shri Kishan Chand.

IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD

Reference No. 254/1993

Between

1. THE MANAGEMENT OF TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH
2. GENERAL MANAGER, HARYANA ROADWAYS, FARIDABAD

And

THE WORKMAN NAMELY SHRI KISHAN CHAND, SON OF SHRI TUHI RAM,
VILLAGE KUSHLIFUR (PALWAL), DISTRICT FARIDABAD

Present :

Shri S.K. Bakshi, for the workman.
Shri Suraj Parkash for the Management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government Endorsement No. 33670, dated 3rd September, 1990 :—

Whether the termination of services of Shri Kishan Chand is legal and justified. If not, to what relief, is he entitled to ?

2. The case of the workman is that he was engaged as helper by the General Manager, Haryana Roadways, Faridabad, Respondent No. 2 on 1st January, 1987 on daily wages basis as per rate fixed by the Deputy Commissioner. He had been performing the duties of a permanent helper to the satisfaction of his officers and as such he demanded wages as paid to the permanent helper. The respondent No. 2 did not relish his demand and terminated his services w.e.f. 29th August, 1987 without following the procedure of issuing charge sheet etc. He approached the respondent No. 2 for reinstatement and he was reinstated into service w.e.f. 26th February, 1988 and worked upto 5th September, 1988. Again on 5th September, 1988 the management terminated his services in the similar way without assigning any reason and justification, without issuing charge-sheet and holding enquiry. The persons who were junior to him were retained in service. The termination of his service is result of unfair labour practice practised by the respondent No. 2 by giving appointment for one month each time. It is against the provision of Section 25-F of the Act. Consequently, he is entitled to be reinstated into service with full back wages.

3. The respondent No. 2 submitted written statement dated 31st January, 1992 admitting the fact that the workman was appointed as helper with effect from 1st January, 1987 on daily wages. It was further mentioned that the workman was appointed on daily wages every month by way of different orders passed each month w.e.f. 1st January, 1987 to 29th August, 1987. Then again the workman had worked on daily wages basis from 26th February, 1988 to 30th September, 1988. His services were discontinued as no longer required in the terms of his appointment. His services were not terminated by way of punishment and as such it was not necessary to issue charge-sheet or hold enquiry. In nutshell the respondent No. 2 pleaded that the case of the workman was one of non-renewal of contract covered under the provision of sub-section 2(o)(bb) of the Act and he was not entitled to the relief claimed by him.

4. The workman did not file rejoinder. On the pleadings of the parties, the following issues were framed :—

- (1) Whether the termination of services of Shri Kishan Chand is legal and justified ? If not, to what relief, is he entitled to ? (As per reference).

(2) Relief.

5. Both the sides have led evidence.

6. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as under :—

Issue No. 1:

7. The respondents have examined one witness Mahinder Singh clerk and he deposed that as per record the workman was appointed as helper w.e.f. 1st January, 1987 on daily wages and that appointment continued upto 29th August, 1987 by issuing appointment letters Ex. M-1 to Ex. M-6 every month. No appointment order was issued regarding the appointment of the workman during the period from 30th August, 1987 to 25th February, 1988. The workman was further, appointed during the period from 26th February, 1988 to 31st August, 1988 as per appointment letters Ex. M-7 to Ex. M-12. In the end, he deposed that Haryana Roadways is a Government department of Haryana State and regular appointments were made either through Service Selection Board or through Employment Exchange. The workman was appointed on daily wages in view of excessive urgent work.

7A. On the other hand, the workman deposed facts as mentioned in his claim statement referred to above.

8. On the basis of aforesaid evidence, it has been contended on behalf of the respondent that it is clear from the perusal of the appointment letters Ex. M-1 to Ex. M-12 that the workman was appointed as helper on daily wages for specific period of one month each time and for specific job mentioned in each and every appointment letter. He was not kept in the job when his services were no longer required. It is a case of non-renewal of contract covered by sub-section 2(oo)(bb) of the Act. The workman is thus, not entitled to any relief.

9. It has been contended on behalf of the workman that MW-1 Mahinder Singh, Clerk admitted in his cross-examination that the workman had worked regularly during the period from 1st January, 1987 to 29th August, 1987. It is thus, clear that the workman had rendered service for a continuous period of more than 240 days during this period. The respondent has not led any evidence to prove that the work for which the workman was appointed had ceased to exist at the time of termination of his services. The respondents had even appointed two helpers namely Milap Singh and Bishamber Dass after the termination of services of the workman. No retrenchment compensation was given to the workman. It is thus, clear that the services of the workman were terminated in violation of the mandatory provision of Section 25-F of the Act. The provision of Sub-Section 2(oo)(bb) of the Act is not applicable on the fact of the instant case. Consequently, the workman is not entitled to be reinstated into services with full back wages.

10. To shore the aforesaid contention, the authorised representative of the workman referred to the case of Ferozepur Central Bank Limited *Versus* Labour Court, Bhatinda, 1986 LLN 204.

11. He also relief upon the decision in the case between Balbir Singh and Kurukshetra Central Cooperative Bank Limited and another 1990 LLJ(1)443 in which the Hon'ble High Court observed as under :—

"Sub-clause (bb) to Clause (oo) of Section 2 of the Act, which was added in 1984 by an amendment cannot be so construed as to drastically restrict the orbit of the term of "retrenchment". Clause (bb) is an exception which must be interpreted narrowly. It cannot be given meanings which may nullify or curtail the ambit of the principal clause. No doubt, the intention of the Parliament in enacting clause(bb) was to exclude certain categories of workers from the term of retrenchment but there is nothing in this clause which allows an outlet to unscrupulous employers to shunt out workers in the garb of non-renewal of their contract even when work subsists. This clause as a whole has to be construed strictly in favour of the workman as far as possible as to ensure that the Act is implemented in letter and spirit. If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause(bb) and the definition of term 'retrenchment' has to be given full meaning. The contractual clause enshrined in clause(bb) cannot be resorted to frustrate the claim of the employee against his uncalled for retrenchment or for denying other benefits. It cannot be so interpreted as to enable an employer to resort to the policy of hire and fire and to confer unguided power on the employer to renew or not renew the contract irrespective of circumstances in which it was entered into or ignore the nature and extent of work for which he was employed."

12. It is evident from the perusal of appointment letters Ex. M-1 to Ex. M-12 placed on record by the respondents that the workman was appointed as helper on daily wages each time for one month against specific vacant post. It is also clear from the perusal of these letters that initially the workman was appointed

as helper on 1st January, 1987 without mentioning the post against which he was posted. Next month that is in February, 1987 he was again posted without mentioning the post against which he was adjusted. Then he was appointed through letters dated 2nd May, 1987 Ex. M-3, 27th May, 1987 Ex. M-4 and 9th July, 1987 Ex. M-5 for the period from 1st April, 1987 to 31st July, 1987 against the vacant post of a cleaner. He was appointed through letter 23rd August, 1987 Ex. M-6 against the vacant post in the workshop staff. After this the workman was appointed through letters dated 25th February, 1988, 4th April, 1988, 21st May, 1988, 15th August, 1988, 26th August, 1988 and 31st August, 1988 to attend to the work pertaining to the vehicle involved in accidents. It is clear from these letters that the workman was appointed as helper for different jobs.

13. It is however, noticed that the appointment was regularised almost every time by issuing letters covering the previous period. For instance the workman was appointed through letter dated 6th March, 1987 Ex. M-2 for the period from 1st February, 1987 to 28th February, 1987 and it was also mentioned in this letter that the services of the workman were liable to be terminated at any time without any prior notice or assigning any reason. Similarly the workman was appointed through letter dated 2nd May, 1987 Ex. M-3 for the period from 1st April, 1987 to 30th April, 1987 again indicating therein that his services were liable to be terminated without assigning any reason. The remaining appointment letters are also in the same tenors and tune. This position clearly shows that the vacancy of a helper existed during the entire period of service of the workman but he was appointed for a period of one month every time to deprive him of his right of to become regular and just as a formality to keep the record of office upto date for audit purpose. These orders were never conveyed to the workman. There is no evidence to show that the work relating to the vehicles involved in accidents had ceased to exist at the time of termination of services of the workman. The witness examined by the management could not give proper reply with regard to the allegation of the workman that two helper were appointed after the termination of his services. It cannot be taken that the management had made appointment of the workman every month bonafide depending upon the need as per requirements of the work load. Keeping in view this position it cannot be taken that the services of the workman were not required after 4th September, 1988. That being so, the case does not fall within the ambit of Section 2(oo)(bb) of the Act as per law laid-down by our own Hon'ble High Court referred to above. Resultantly, it is held that the termination of services of workman is not legal and justified and he is entitled to be reinstated into service with full back wages. Issue No. 1 is decided against the management and in favour of the workman.

Relief :

In view of my findings on Issue No. 1 above, it is held that the termination of services of the workman is not legal and justified. The workman is entitled to be reinstated into service and full back wages. The award is passed accordingly.

Dated : The 24th July, 1994.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

Endosrement No. 2546, dated the 28th July, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner and Secretary to Government, Haryana Labour Department, Chandigarh.

U.B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

No. 14187-6Lab./41. -In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court II, Faridabad in respect of the dispute between the workman and the management of M/S Indo Graphic Art Machinery Company, Ballabgarh (Faridabad) *Versus* Shri Virender Singh

IN THE COURT OF SH. U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II
FARIDABAD

Ref. No. 142/90.

between

THE MANAGEMENT OF M/S INDO GRAPHIC ART MACHINERY COMPANY PRIVATE LTD
PLOT NO. 22, MATHURA ROAD, BALLABGARH.

versus

THE WORKMAN NAMED SH. VIRENDER SINGH C/O SH. K.L. SHARMA, G-25, OLD PRESS
COLONY, N.I.T. FARIDABAD.

Present :

Sh. K. L. Sharma, for the workman.

Sh. Pardeep Sharma, for the Management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,— vide Haryana Govt. Endst. No. 14552—157, dated 30th March, 1990 :—

Whether the termination of services of Sh. Virender Singh is legal & justified ? If not, to what relief, is he entitled to ?

2. The case of the workman is that he was employed by the management as Electrician w.e.f. 10th September, 1987. His last drawn wages were Rs. 830 p. m. He had been discharging his duties to the entire satisfaction of his superiors without any sort of complaint. On 1st September, 1989 he reported for duty as usual but he was not allowed to join duty without assigning any reason or giving prior notice. He had been reporting for duty daily upto 5th October, 1989 but ultimately he was told that his services had been terminated w.e.f. 1st September, 1989. Termination of his services in the aforesaid manner tantamounts to retrenchment and the compliance of provision of section 25-F of the Act was mandatory. The impugned order is thus, illegal being violation of provision of section 25-F of the Act. Consequently, he is entitled to be reinstated into service with full back wages.

3. The management submitted written statement dated 26th August, 1991 stating therein that the workman was employed as Electrician w.e.f. 1st December, 1987. On 31st August, 1988 he left the service by tendering resignation and collecting his full and final dues. Thereafter the workman was engaged on contract basis as a junior mechanic (Electric) for a period of one year from 1st September, 1988 to 31st August, 1989,—vide a service contract dated 7th September, 1988 duly executed by him. The period of contract ended on 31st August, 1989 and as such the workman ceased to have any relation with the management. The case is covered under the provisions of Section 2 (oo) (bb) of the Act and as such the compliance of provisions of Section 25-F was not required to be made. Consequently, the workman is not entitled to any relief.

4. The workman submitted rejoinder dated 27th January, 1992 re-asserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issue was framed :—

(1) Whether the termination of services of Sh. Virender Singh is legal & justified ? If not to what relief, is he entitled to ?

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the after said issue are as under :—

Issue No. 1:

The management has examined one witness. MW 1 Yasin Khan and he deposed that workman was employed by them as an Electrician. He was on probation for a period of six months from 1st December, 1987 to 31st May, 1988 then his period of probation was extended for a period of 3 months upto 31st August, 1988. Then the workman submitted resignation Ex. M-1 and took his full & final dues through receipt Ex. M-2, then again the workman was assigned the job of contract basis for a period of one year as per agreement Ex. M-3. The workman was advised to collect his full & final dues on 31st August, 1989 but he had not done so and served the demand notice. He denied the suggestion in cross examination that the workman was kept on contract basis for a period of one year to deprive him of his right to have retrenchment compensation.

9. On the other hand, the workman deposed facts mentioned above in the claim statement. He also placed on record a copy of the failure report of Conciliation Officer Ex. W-1. He also stated that he was told by the management to sign the agreement Ex. M-4 with an assurance that he will be allowed to be continually in service.

10. On the basis of aforesaid evidence, it has been submitted on behalf of the management that the case of the workman falls under Section 2 (oo) (bb) of the Act as he was engaged for a particular period. The workman himself admitted in his statement that he submitted resignation and thereafter he was employed on contractual basis. The workman has not challenged that the resignation was obtained from him under duress. Thus, the workman is not entitled to any relief.

11. In reply, it has been contended on behalf of the workman that is not disputed by the management that the workman had worked with them w.e.f. 10th September, 1987 to 30th August, 1989. It is thus, clear that the workman had worked for a continuous period of more than 240 days with the management. The management had indulged in unfair labour practice. Firstly by issuing appointment letter for a fixed period and then by getting contract signed from the workman with a false assurance that he will be allowed to continue in service. This

practice was adopted by the management to deprive the workman of his right to become regular and get retrenchment compensation. The impugned action of the management is thus, illegal and violative of the provisions of Section 25 of the Act. The workman is entitled to be reinstated into service with full back wages and continuity in service.

12. To support the aforesaid plea, a reference has been made to the case between Balbir Singh and Kurukshetra Central Coop. Bank Ltd. and another 1980 LLJ-(I) 443 and to the case between Dilip Hanumantrao Shirke and others and Zilla Parishad Yavatmal and others 1990 LLJ (I) 445.

13. It was held in the case between Balbir Singh *Versus* Kurukshetra Central Coop. Bank Ltd. and another 1990 LLJ (I) 443 that in fact clause 2 (oo) (bb) which is an exception is to be so interpreted as to limit it cases where the work itself has been accomplished and the agreement of hiring for a specific period was genuine. It was further held that if the work continues the non renewal of the contract has to be dubbed as *mala fide*. It would be fraud in law if it is interpreted Otherwise.

14. It was held in the case between Dilip Hanumantrao Shirke and others and Zila Parishad, Yavatmal and others 1990 LLJ (I) 445 that the amended sub-clause (bb) would apply only to cases where work cases with employment or post itself ceases to exist or such other analogous cases where contract of employment is fair, proper and *bona fide*. It was also held in this case that the Labour Court has jurisdiction to examine each and every case and protect the workman against exploiting employers.

15. In the instant case the workman simply stated in the demand notice that he was employed on 1st September, 1987 and his services were terminated on 1st September, 1989. In his claim statement the workman added that he had been wilfully and deliberately victimised by the management by adopting unfair labour practice on account of his active participation in trade union activities against the wishes of the management. In reply the management to a specific plea that he was appointed firstly for fixed term on probation and then the period of probation was extended. It was also specifically mentioned by the management in the written statement that the workman had entered into contract for a period of one year. In the rejoinder dated 27th January, 1992 the workman again did not mention that he had submitted his resignation. He stated that he had no knowledge of any contractual employment as alleged by the respondent. He rather stated that at the time of appointment the management had got his signatures on some blank papers which were misused.

16. The workman admitted in his cross examination that the resignation letter Ex-M-1 was written in his hand. The workman also admitted that the voucher regarding payment of this full and final dues Ex-M-2, His request for getting work on contract basis Ex-M-3 and the agreement Ex-M-4 bore his signatures. In this regard, he stated in his cross examination that he had not informed his authorised representative that he had appended his signatures on these documents as he had signed these documents considering it as a formality on the asking of the management. In this situation, it cannot be taken that the management had utilised any blank paper allegedly got signed by the workman as alleged in the pleadings. It has to be held that the workman had tendered his resignation by writing in his own hand voluntarily and fully understanding its contents being a matriculate. He also accepted full and final amount as per voucher Ex-M-2. No foul play on the part of the management can thus be inferred.

17. The workman has not led any evidence to show that he was connected with the trade union activities in any way. The plea taken by him in this regard thus, can not be taken to have been proved.

18. Keeping in view all facts and circumstances, enumerated above the law laid down in two cases referred to by the authorised representative of the workman cannot be applied on the facts on this case and that too especially when workman himself did not plead that he was appointed for a fixed period and his resignation was taken and again was given the work on contract basis *mala fide*.

19. For the reasons recorded above, it is held that the management had not terminated the services of the workman illegally. The services of the workman had come to an end by efflux of time. Consequently, the workman is entitled to any relief. Issue is decided in favour of the management and against the workman. The award is passed accordingly.

Daed 28th July, 1994

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.

Endst. No. 2559, Dated 29th July, 1994.

A copy with three spare copies is Forwarded to the Financial Commissioner & Secretary to Govt. Haryana, Labour and Employment Deptt. Haryana, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad